

**SPECIAL NOTICE LETTER**  
**URGENT LEGAL MATTER**  
**PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

Re: Special Notice Letter for the Gulfco Marine Maintenance Superfund Site  
Freeport, Texas and Draft Consent Decree for Past Costs and Completion of the Remedial  
Action

Dear Sir or Madam:

The purpose of this letter is to notify you of your potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund), 42 U.S.C. § 9607(a), at the Gulfco Marine Maintenance Superfund Site (the Site) in Freeport, Texas. This letter also requests from you reimbursement of costs incurred by the U.S. Environmental Protection Agency (EPA) for responding to releases, or threats of releases, at the Site. Total costs incurred as of February 28, 2013, are \$2,033,717. This letter also invites you to enter into negotiations to complete the remaining work that must be performed at the Site which consists of completion of the Remedial Action by preparation and implementation of final institutional controls; and Operation and Maintenance, including repairs to the existing cap and groundwater monitoring.

Based on available information, EPA has determined that you may be liable under Superfund for the cleanup of the Site and for costs incurred by EPA in responding to the Site.

**BACKGROUND**

The Site is located at 906 Marlin Avenue, Freeport, Brazoria County, Texas. The property consists of Tracts 21 through 25 and Tracts 55 through 58, Subdivision 8, of the Brazos Coast Investment Company. Marlin Avenue separates Tracts 55 through 58 on the north from Tracts 21 through 25 on the south. Tracts 21 through 25 are approximately four-acre tracts bordered on the south by the Intracoastal Waterway. Tracts 55 through 58 are approximately five-acre tracts. The entire property is about 40 acres in size. The geographic coordinates of the Site are 28°58'07" north latitude, and 95°17'26" west longitude.

The Gulfco Site was a former barge cleaning, servicing, and waste disposal facility that operated from 1971 through 1998. Barges brought to the facility were cleaned of waste oils, caustics, and organic chemicals, and the wash waters generated during these operations were stored in  
DRAFT SPECIAL NOTICE LETTER FOR GULFCO MARINE MAINTENANCE SUPERFUND SITE  
March 28, 2013.

three unlined surface impoundments, or earthen pits, located on Lot 56 on the north side of Marlin Avenue. These impoundments were closed in 1982. After 1981, waste wash waters were stored in a rented floating barge or aboveground storage tanks located at the Site.

The Site is located on the north bank of the Intracoastal Waterway between Oyster Creek on the east and the Old Brazos River Channel and the Dow Barge Canal on the west. The southern part of the Site, south of Marlin Avenue, drains toward the south where it enters into the intracoastal Waterway. Drainage from areas north of Marlin Avenue is to the northeast into adjacent wetlands and then to Oyster Creek.

In January 2000, and in January 2001, the Texas Commission on Environmental Quality, formerly the Texas Natural Resource Conservation Commission, conducted soil, ground water, and sediment sampling, and documented the presence of various hazardous substances at the Site including volatile organic compounds, semivolatile organic compounds, pesticides, polychlorinated biphenyls, and metals.

The Site was proposed for listing on the National Priorities List (NPL) on September 5, 2002 (67 *FR* 56794), and was placed on the NPL effective May 30, 2003, in a final rulemaking published on April 30, 2003 (68 *FR* 23077).

The EPA issued a Unilateral Administrative Order (UAO), effective July 29, 2005, to the Site potentially responsible parties (PRPs) to perform a Remedial Investigation to define the nature and extent of contamination at the Site and to prepare a Feasibility Study to identify and screen remedial action alternatives. The PRPs completed the RI/FS in 2011.

A Site Removal Action began in November 2010 and was completed by March 2011. The Removal Action, which was performed pursuant to an Administrative Order on Consent ("AOC"), addressed the former AST Tank Farm at the South Area. The action included characterization and management of water accumulated in the AST Tank Farm containment areas; removal and off-site disposal of liquid wastes from the tanks; and solidification, removal, and off-site disposal of non-liquid (*i.e.*, solids and sludge) wastes from the ASTs. The tanks were subsequently demolished following removal of the wastes and decontamination. The South Containment Area was cleaned and decontaminated following the removal of all tanks and debris, and contaminated soil in the North Containment Area was excavated and removed for disposal. The concrete containment berms at the North and South Containment Areas were breached so that rainfall would freely drain from the structures. Piping, metal "cat-walks," a steel hopper-like structure located within the North Containment Area, and a metal walled structure located immediately east of the North Containment Area were demolished and removed. The Removal Action also included an asbestos survey, and the removal and disposal of debris and contaminated soil located inside and east of the containment areas. The Removal

Action objectives of protecting the public health, welfare, or the environment, set forth in the Settlement Agreement, were met through the performance of the Removal Action activities documented in the Final Removal Action Report.

The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 29, 2011. The ROD does not require a Remedial Design or physical construction of a Remedial Action. Because the ROD provided for no physical construction of a Remedial Action for the Site, the EPA documented Construction Completion at the Site on September 29, 2011. The remaining work that must be performed at the Site consists of: completion of the Remedial Action by preparation and implementation of final institutional controls; and Operation and Maintenance, including repairs to the existing cap and groundwater monitoring.

#### **EXPLANATION OF POTENTIAL LIABILITY**

CERCLA provides that four types of persons are liable for cleaning up (or paying the EPA to clean up) hazardous substances that have been released. The four types of liable persons are:

1. Persons who now own the place where the hazardous substances were released;
2. Persons who once owned or operated the place where the hazardous substances were released during the time when the hazardous substances were disposed;
3. Persons who arranged for disposal or treatment of hazardous substances at the place where the hazardous substances were released; or
4. Persons who selected the place where the hazardous substances were released as a disposal site and transported the hazardous substances to that place.

The EPA's term for these persons is Potentially Responsible Parties (PRPs). EPA has information (included as Enclosure C with this letter) that you may be a PRP as a current or previous owner or operator of the Site as defined at Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a), as amended (CERCLA). According to this information you currently own a portion of the Site, including Tracts 21 through 25, and Tracts 55, 57, and 58, that is contaminated with hazardous substances.

The EPA has spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Under Superfund, specifically sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), PRPs may be required to perform cleanup actions to protect the public health, welfare, or the

environment. The PRPs may also be responsible for costs incurred by EPA in cleaning up the Site.

### **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

Under CERCLA, EPA may use special notice procedures when these procedures would help reach an agreement with PRPs. The special notice procedures are described at 42 U.S.C. § 9622(e). The powers given to the President by CERCLA Subsection 9622(e) have been delegated to EPA.

The EPA has decided that special notice procedures may help EPA and you reach a settlement for this Site. As part of the special notice procedures, EPA will not take certain types of actions at the Site for 60 days from the date you receive this notice. During these 60 days, EPA invites you to settle some of EPA's claims. The EPA will extend this 60-day time for 60 more days if EPA receives a good-faith offer from you within 60 days of your receipt of this notice.

If you and EPA reach settlement within the 120-day negotiation period (it is a 120-day period because it includes the first 60-day period plus the 60-day period which EPA may add if you submit a good-faith offer), the settlement will be memorialized as a judicial consent decree. If approved, the Consent Decree would be signed and entered by a U.S. District Judge in United States District Court in conjunction with the simultaneous filing of a civil complaint.

To help negotiations get started, I have enclosed a Draft Consent Decree, and draft Statement of Work (SOW) which describes the work that needs to be performed at the site.

### **GOOD FAITH OFFER**

Please use the enclosed draft consent decree and draft SOW to assist you in developing a good-faith offer for performing the required work at the site and for reimbursing the EPA for past costs and future oversight costs. In order for your proposal to be considered a good-faith offer it must be in writing and it must include the following:

1. Your statement that you are willing to conduct or finance the remaining work to be performed at the site in a manner consistent with EPA's draft consent decree and draft SOW which provides a sufficient basis for further negotiation.
2. A paragraph-by-paragraph response to the EPA's draft consent decree and draft SOW (a redline/strikeout version of the consent decree and SOW, as described above, is adequate for this purpose). In addition, please identify the changes which you consider to be major issues.

3. If you choose to conduct (rather than finance) the work to be performed at the site, a demonstration that you are technically capable of carrying out the work, including the identification of the party or parties that may actually conduct the work, or a description of the process that you will use to select the party or parties.

4. A statement that you are willing to reimburse the EPA for past response costs and costs to be incurred in overseeing the PRP's performance of the work at the site.

5. A demonstration that you are capable of financing the work to be performed at the site (an annual report is sufficient).

6. The name, address, and phone number of the party or steering committee representative who will represent you and any other PRPs in negotiations, if applicable.

If EPA determines that a good faith offer has not been submitted within the 60-day period, EPA may, thereafter, terminate the negotiation moratorium period pursuant to Subsection 22(e)(4) of CERCLA, 42 U.S.C. § 9622(e)(4), and commence such response activities or enforcement actions as may be appropriate.

#### **DEMAND FOR REIMBURSEMENT OF COSTS**

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. You are responsible for reimbursing the Federal government for the response costs associated with these actions. These actions include, among others, preparation of the Hazard Ranking System package, performance of searches for PRPs, performance of Site inspections, and preparation of the Unilateral Administrative Order and the Administrative Order on Consent, the draft consent decree and the draft Statement of Work. The total of the EPA's costs through February 28, 2013, for the Site is \$2,033,717. The enclosed Itemized Cost Summary provides a listing of the EPA's costs.

We hereby demand that you pay \$2,033,717. The EPA's demand for payment is made under Title 42 of the United States Code at Subsection 9607(a). EPA also anticipates expending additional funds for response activities, which may include oversight of work to be performed at the site as described above. Whether EPA funds the response action or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for the expenditures plus interest.

#### **PRP STEERING COMMITTEE**

To assist PRPs in negotiating with EPA concerning this matter, EPA is attaching to this DRAFT SPECIAL NOTICE LETTER FOR GULFCO MARINE MAINTENANCE SUPERFUND SITE March 28, 2013.

letter a list of the names and addresses of other PRPs to whom it is sending this Notice.

The EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Your good-faith offer may be made by you alone or through a steering committee. EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

#### **ADMINISTRATIVE RECORD**

Pursuant to CERCLA Section 113(k), 42 U.S.C § 9613(k), EPA must establish an Administrative Record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the actions conducted at this Site are available to the public for review. A copy of the Administrative Record file can be found at the EPA Region 6 offices in Dallas, Texas, or at the site information repository that was set up at the following location:

Freeport Public Library  
410 Brazosport Blvd.  
Freeport, TX 77541  
(979) 233-3622  
Contact: Ms. Margaret Janke, Branch Manager

You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

#### **PRP RESPONSE AND EPA CONTACT PERSON**

You are encouraged to contact EPA within thirty (30) days of receipt of this letter to indicate our willingness to participate in future negotiations at this Site. Please note that this Special Notice requires you to reply in writing with a good-faith offer within 60 days of your receipt of this letter. You may respond individually or through a steering committee if such a committee has been formed. This notice explains what the EPA means by a good-faith offer. Also note that this notice includes a demand for payment; this allows the EPA to preserve certain legal rights. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities.

Your response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the RI/FS for the Site, should be sent to:

DRAFT SPECIAL NOTICE LETTER FOR GULFCO MARINE MAINTENANCE SUPERFUND SITE  
March 28, 2013.

Mr. M. Gary Miller, Remedial Project Manager  
U.S. Environmental Protection Agency, Region 6  
Superfund Division (6SF-AP)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
(214) 665-8318, FAX (214) 665-6660

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon, as final EPA positions on any matter discussed in this notice.

If you have any questions pertaining to this matter, please contact M. Gary Miller, Remedial Project Manager, at (214) 665-8318 or Lawrence Andrews, Litigation Coordinator, at (214) 665-7397, or direct your attorney to contact Anne Foster (214) 665-2169 in the EPA Office of Regional Counsel.

Sincerely yours,

Carl Edlund, Director  
Superfund Division

Enclosures